

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

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) MDL No. 2419

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) Dkt. No. 1:13-md-2419-FDS

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This Document Relates to:

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Barger, et al. v. Ameridose, LLC et al.

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) Dkt. No. 1:13-cv-12619-FDS

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Come the Defendants, Saint Thomas Outpatient Neurosurgical Center, LLC ("STOPNC"), Howell Allen Clinic, a Professional Corporation ("Howell Allen"), John Culclasure, M.D., and Debra Schamberg, R.N. (collectively "Defendants"), and submit this Statement of Undisputed Material Facts pursuant to Local Rule § 56.1, in support of their Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

1. The Plaintiffs, Vickie Barger, Lisa Maddox, Wayne McWhorter, Samuel Groves, Betty Smiley, John Edward Jones, Angela May, Gary Wayne Waddey, Peggy Sumner, Anthony Clay Morris, Sheniah Altom, and Virginia Swann, received health care, including epidural steroid injections, at Saint Thomas Outpatient Neurosurgical Center, LLC.

Source: Complaint at ¶ 5; Affidavit of John W. Culclasure M.D. at ¶¶ 3, 8.

Response:

2. On September 7, 2012, Dr. Culclasure performed a medial branch block injection on Plaintiff Claudia Ellis, injecting 0.5 ml of 1:1 mix of pf .75% Bupivacaine + pf 4% Lidocaine.

Source: Affidavit of John W. Culclasure M.D. at ¶ 4.

Response:

3. Ms. Ellis did not receive New England Compounding Center preservative-free MPA from one of the three recalled lots.

Source: Affidavit of John W. Culclasure M.D. at ¶ 5.

Response:

4. The Plaintiffs received medical care at Saint Thomas Outpatient Neurosurgical Center, LLC, including epidural steroid injections after a diagnosis of, and as treatment for, spinal nerve pain.

Source: Affidavit of John W. Culclasure M.D. at ¶ 10.

Response:

5. During epidural steroid injections, Dr. Culclasure followed a procedure that complied with the recognized standard of acceptable professional practice.

Source: Affidavit of John W. Culclasure, M.D. at ¶¶ 6-7.

Response:

6. The administration of MPA to the Plaintiffs was part of the health care that they received at Saint Thomas Outpatient Neurosurgical Center, LLC.

Source: Affidavit of John W. Culclasure M.D. at ¶¶ 3, 6, 7, and 8.

Response:

7. Dr. Culclasure, along with Debra Schamberg, R.N., made the decision to purchase MPA from NECC for Saint Thomas Outpatient Neurosurgical Center, LLC.

Source: Affidavit of John W. Culclasure M.D. at ¶ 11.

Response:

8. At the time of the treatment at issue, Dr. Culclasure was a licensed physician.

Source: Affidavit of John W. Culclasure M.D. at ¶ 12.

Response:

9. At the time of the treatment at issue, Saint Thomas Outpatient Neurosurgical Center, LLC was licensed as an ambulatory surgery center.

Source: Affidavit of John W. Culclasure M.D. at ¶ 13.

Response:

10. The Plaintiffs did not provide notice of the filing of a health care liability action at least 60 days prior to filing the Complaint.

Source: Complaint at ¶ 255.

Response:

11. The Plaintiffs did not file a certificate of good faith with the Complaint.

Source: Complaint at ¶¶ 1-267.

Response:

12. The Plaintiffs suffered various injuries and medical conditions including, but not limited to, fungal meningitis, localized spinal or paraspinal infections (*i.e.*, epidural abscesses, arachnoiditis, phlegmon, etc.), anxiety, depression, and complications associated with lumbar punctures as a result of injections of MPA received at Saint Thomas Outpatient Neurosurgical Center, LLC.

Source: Complaint at ¶ 7.

Response:

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris Tardio

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 9th day of December, 2013.

/s/ Chris Tardio

Chris Tardio